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NELLY C. OSUJI

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NELLY C. OSUJI,

Plaintiff,

vs.

CAPITAL ONE, N.A.,

Defendant.

No. 2:22-cv-1122 KJM DB

STIPULATION FOR ENTRY OF
PROTECTIVE ORDER; AND ORDER

COME NOW Plaintiff Nelly Osuji ("Plaintiff") and Defendant identified as Capital One, N.A., ("Capital One"), by and through the undersigned counsel, and stipulate to the entry of the Proposed Agreed Protective Order submitted contemporaneously herewith, stating as follows:

1. The Parties agree that a Protective Order is needed to protect confidential information disclosed during the course of discovery in this matter.

2. The Parties have conferred regarding such a Protective Order and have agreed to the contents of a proposed Protective Order to facilitate the production of confidential documents, as outlined below.

Respectfully submitted this 27th day of October, 2022.

s/ Rachel B. Cash

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PROPOSED AGREED PROTECTIVE ORDER

The Court has considered the following Agreed Protective Order, relating to the production of material, documents and information through discovery which the parties determine to be confidential material as defined herein, based on the agreement of the parties as evidenced by the signatures of counsel of record, and is of the opinion this order should be entered. It is therefore

ORDERED:

1. Policies, procedures, documents, records and/or guidelines produced by the Parties that is/are reasonably believed to contain sensitive, proprietary, private, personal and/or confidential information may be designated as “Confidential Material.”

2. Designation of “Confidential Material” may be made by stamping or otherwise marking the materials as follows: “Use of Document Restricted By Court Order” or “Confidential Pursuant to Court Order” or “Confidential.” For purposes of this paragraph, an entire document, file or thing may be designated as “Confidential Material” by the Producing Party by: (1) stamping or otherwise marking the first or cover page of a multi-page document or a file folder containing multiple documents, (2) labeling a tape, disk and/or compact disk, in each instance in a manner reasonably calculated to call to the attention of other Parties the nature and scope of the designation, or (3) letter advising all other Parties of those documents (identified by Bates number ranges if possible) which the Producing Party is designating as “Confidential Material.”

3. If a Producing Party inadvertently fails to stamp or mark certain documents upon their production, it may designate such documents as “Confidential Material” by giving notice to all Parties that the material is to be so designated by stamping or otherwise marking the “Confidential Material” as described in the preceding sentence. In either case, all Parties shall then

1 stamp or otherwise mark the designated material as “Confidential Material” as described above.
2 The parties may also designate documents that have already been produced as “Confidential
3 Material” in writing, describing the document(s) by bates number if possible.

4 4. “Confidential Material,” and information derived from or contained in “Confidential
5 Material” (including, but not limited to, all testimony given in a deposition, declaration or
6 otherwise, that refers, reflects or otherwise discusses any information designated “Confidential”
7 hereunder) shall be used only as reasonably necessary for preparation and trial of this action,
8 including any appeal or retrial, and shall not be used for any other purpose, including, without
9 limitation, any other litigation or proceeding; any business, competitive, or governmental purpose
10 or function; and shall not be disclosed in any public manner, including in the contents of pleadings
11 filed in this action, with the exception of filings made pursuant to paragraph 12 of this order.
12 “Confidential Material” and information derived from “Confidential Material” shall not be
13 disclosed except as set forth in paragraphs 5, 6, and/or 15.

14 5. “Confidential Material” may be disclosed only to the following persons, and they
15 need not sign the certificate that is attached as “Exhibit A”:

- 16 (a) Counsel of record for any Party;
17 (b) any Party;
18 (c) Paralegal, stenographic, clerical and secretarial personnel employed by counsel
19 described in (a); and
20 (d) Court personnel including stenographic reporters engaged in such proceedings as
21 are necessarily incident to preparation for trial and trial of this action.
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23 6. “Confidential Material” may also be shown or disclosed to consultants, witnesses,
24 and/or prospective witnesses at or in preparation for deposition or trial who are persons other than
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1 those authorized to receive such material by the terms of paragraph 5 of this Order, but only as
2 necessary to their testimony or anticipated testimony, provided that each such consultant, witness,
3 or prospective witness shall first sign the certificate attached as Exhibit A in the manner set forth in
4 paragraph 7 below.

5 7. Each individual, other than those identified in paragraphs 5(a) - (d) above, to whom
6 “Confidential Material” is furnished, shown, or disclosed, shall prior to the time s/he receives
7 access to such materials, be provided by counsel furnishing the individual such material a copy of
8 this Order and agree to be bound by its terms, and shall certify that s/he has carefully read the
9 Order and fully understands its terms, by signing the certificate attached as Exhibit A. Such person
10 also must consent to be subject to the personal jurisdiction of this Court, and to the personal
11 jurisdiction of any Court to which this action may be transferred, with respect to any proceeding
12 relating to enforcement of this Order, including any proceeding relating to contempt of court. The
13 certificate shall be of the form set forth in Exhibit A hereto. Counsel making disclosure to any
14 person as described herein above shall retain the original executed copy of said certificate until
15 final termination of this litigation, and shall provide the Producing Party with a signed copy of
16 Exhibit A no later than ten (10) days after said certificate is executed.

17 8. All persons receiving any or all documents produced pursuant to this Order shall be
18 advised of their confidential nature. All persons to whom confidential information and/or
19 documents are disclosed are hereby enjoined from disclosing same to any person except as
20 provided herein, and are further enjoined from using same except in the preparation for and trial of
21 the above-captioned action between the named parties thereto. No person receiving or reviewing
22 such confidential documents, information or transcript shall disseminate or disclose them to any
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1 person other than those described above in Paragraph 5 and for the purposes specified, and in no
2 event shall such person make any other use of such document or transcript.

3 9. The placing of any confidentiality designation or a production identification number
4 on the face of a document produced shall have no effect on the authenticity or admissibility of that
5 document at trial. The Parties shall cooperate in obtaining, to the extent reasonably requested by
6 any Party, unmarked copies of stamped documents to be used at trial, provided, however, that there
7 shall be no obligation to obtain non-Bates-numbered copies of any document.
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9 10. The list of persons to whom “Confidential Material” may be disclosed may be
10 expanded by mutual written consent of counsel of record. Any Party may propose such an
11 expansion by serving a letter on all counsel in this case and counsel for the Producing Party
12 specifically identifying, and describing the role and function of, the person(s) intended to be added
13 to the list. If counsel for any Party objects to any proposed expansion within ten (10) days after
14 receipt of the letter from the Proposing Party, no “Confidential Material” may be disclosed to any
15 person(s) intended to be added to the list.
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17 11. Nothing in this Order shall be construed to limit in any way the ability of the
18 Producing Party to use or disclose “Confidential Material” in the possession of such Producing
19 Party and designated as “Confidential Material” by such Producing Party in any manner
20 whatsoever.
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22 12. The foregoing is without prejudice to the right of any Party: (a) to apply to the
23 Court for a further protective order relating to any “Confidential Material” or relating to any
24 discovery in this litigation; (b) to object to the production of documents it considers not subject to
25 discovery; or (c) to apply to the Court for any order compelling production of documents or
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1 modification of this Order or for any order permitting disclosure of “Confidential Material” beyond
2 the terms of this Order.

3 13. The parties agree to comply with the governing rules of procedure, and seek an
4 order allowing “Confidential Material” to be filed under seal before filing any such materials with
5 the Court.

6 14. If “Confidential Material” is disclosed at a deposition, only the court reporter and
7 those persons who are authorized by the terms of this Order to receive such material may be
8 present. All transcripts of such depositions, and exhibits thereto, shall, in their entirety, be treated
9 as “Confidential Material.”

10 15. Should any Party to whom “Confidential Material” is disclosed object to the
11 classification of such materials, the objecting party shall provide the producing party with written
12 notice of each designation it is challenging and describing the basis for each challenge. To avoid
13 ambiguity as to whether a challenge has been made, the written notice must recite that the
14 challenge to confidentiality is being made in accordance with this specific paragraph of the
15 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin
16 the process by conferring directly (in voice to voice dialogue; other forms of communication are
17 not sufficient) within 14 days of the date of service of notice. In conferring, the objecting party
18 must explain the basis for its belief that the confidentiality designation was not proper and must
19 give the producing party an opportunity to review the designated material, to reconsider the
20 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
21 designation. If the objection cannot be resolved informally, then the producing party must, within
22 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
23 confer process will not resolve their dispute, whichever is earlier, move for an order determining
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1 that the materials were not properly designated. Until the Court rules to the contrary, all materials
2 designated as “Confidential Material” shall be treated as prescribed in this Order.

3 16. If any Party or person that has obtained “Confidential Material” under the terms of
4 this Order receives a subpoena or other legal process commanding the production of any such
5 documents or information (“subpoena”), such Party or person shall within five (5) business days
6 notify counsel for the Producing Party or the party that designated the information or documents as
7 “Confidential Material” of the service of the subpoena. The Party or person receiving the
8 subpoena shall not produce any “Confidential Material” in response to the subpoena without either
9 the prior written consent of the Party or person that designated the information or documents as
10 “Confidential Material” or an order of a court of competent jurisdiction. However, the Party or
11 person that designated the information or documents as “Confidential Material” in such case shall
12 have the burden of seeking a court order relieving the subpoenaed Party or person of the
13 obligations of the subpoena prior to the return date of such subpoena, or the subpoenaed Party or
14 person shall be relieved of its obligations under this paragraph.
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17 17. The provision of this Order shall not terminate at the conclusion of this action.
18 Within thirty (30) days of the conclusion of the trial and of any appeals, or upon other termination
19 of this litigation, all documents and copies thereof, including, without limitation, all “Confidential
20 Material” received under the provisions of this Order, and all documents containing or describing
21 “Confidential Material” other than trial transcripts and trial exhibits admitted into evidence and
22 declarations executed pursuant to paragraphs 5 or 6 hereto shall, at the option of the Producing
23 Party or person, either be returned to the Producing Party or person or destroyed; provided,
24 however, that privileged documents or work product need not be returned but instead shall be
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1 destroyed. All parties or persons that received “Confidential Material” shall certify compliance
2 with this section in writing at the request of the Producing Party or person.

3 18. In the event anyone shall violate or threaten to violate any terms of this Order, the
4 aggrieved Party may seek damages and injunctive relief, and it shall not be a defense thereto that
5 the aggrieved Party possesses an adequate remedy at law.
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7 19. All persons subject to the terms of this Order agree that this Court, or any Court to
8 which this action is transferred, shall retain jurisdiction over them for the purpose of enforcing this
9 Order.

10 20. Nothing in this Order shall provide the basis for any assertion that confidentiality
11 protection should or should not extend to documents used as exhibits at a trial in this action. Upon
12 request, the parties shall meet and confer regarding the treatment of “Confidential Material” at
13 trial. In the event that the parties cannot agree on an appropriate form of a proposed order, the
14 treatment of “Confidential Material”, if any, shall be governed by the Pretrial Order or orders
15 concerning the conduct of the trial.
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17 21. The terms “Party” and “Parties” as used in this Order refer to the current parties to
18 this action as well as any parties who may later be added to or join this action. The terms of this
19 Order shall apply automatically to any such later added or joined parties, and shall also apply to
20 any person having actual or constructive knowledge of this Order. The terms “Producing Party”
21 and “Producing Parties” shall refer not only to the Parties, but also to any non-party that produces
22 documents in the action.
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24 22. “Confidential Material” shall not be copied or reproduced for use in this action
25 except to the extent that such copying or reproduction is reasonably necessary to the conduct of
26 this action, and all such copies or reproduction shall be subject to the terms of this Order. If the
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1 3. A request to seal material must normally meet the high threshold of showing that
2 “compelling reasons” support secrecy; however, where the material is, at most, “tangentially
3 related” to the merits of a case, the request to seal may be granted on a showing of “good cause.”
4 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016); Kamakana
5 v. City and County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

6 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of
7 certain documents, at any court hearing or trial – such determinations will only be made by the
8 court at the hearing or trial, or upon an appropriate motion.

9 5. With respect to motions regarding any disputes concerning this protective order which
10 the parties cannot informally resolve, the parties shall follow the procedures outlined in Local Rule
11 251. Absent a showing of good cause, the court will not hear discovery disputes on an ex parte
12 basis or on shortened time.

13 6. The parties may not modify the terms of this Protective Order without the court’s
14 approval. If the parties agree to a potential modification, they shall submit a stipulation and
15 proposed order for the court’s consideration.

16 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement
17 of the terms of this Protective Order after the action is terminated.

18 8. Any provision in the parties’ stipulation that is in conflict with anything in this order is
19 hereby DISAPPROVED.

20 DATED: October 28, 2022

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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